

## APPENDIX

Revenue Act of 1928, c. 852, 45 Stat. 791:

### SEC. 144. WITHHOLDING OF TAX AT SOURCE.

(a) *Tax-free covenant bonds.*—

(1) *Requirement of Withholding.*—In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this title upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to an individual, a partnership, or a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein: *Provided*, That if the liability assumed by the obligor does not exceed 2 per centum of the interest, then the deduction and withholding shall, after the date of the enactment of this Act, be at the following rates: (A) 5 per centum in the case of a nonresident alien individual, or of any partnership not engaged in trade or business within the United States and not having any office or

place of business therein and composed in whole or in part of nonresident aliens, (B) 12 per centum in the case of such a foreign corporation, and (C) 2 per centum in the case of other individuals and partnerships: *Provided further*, That if the owners of such obligations are not known to the withholding agent the Commissioner may authorize such deduction and withholding to be at the rate of 2 per centum, or, if the liability assumed by the obligor does not exceed 2 per centum of the interest, then at the rate of 5 per centum.

(2) *Benefit of Credits Against Net Income*.—Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the credits provided in section 25 (c) and (d); nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 215.

\* \* \* \*

(d) *Income of recipient*.—Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

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#### SEC. 291. FAILURE TO FILE RETURN.

In case of any failure to make and file a return required by this title, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, 25 per centum of the tax shall be added to the tax, except that when a return is filed after such

time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3176 of the Revised Statutes, as amended.

Section 291 of the Revenue Act of 1932, c. 209, 47 Stat. 169, is identical.

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 143. WITHHOLDING OF TAX AT SOURCE.

(a) *Tax-Free Covenant Bonds*.—

(1) *Requirement of Withholding*.—In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this title upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to an individual, a partnership, or a foreign corporation not engaged in trade or

business within the United States and not having any office or place of business therein: *Provided*, That if the liability assumed by the obligor does not exceed 2 per centum of the interest, then the deduction and withholding shall be at the following rates: (A) 8 per centum in the case of a nonresident alien individual; or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, (B)  $13\frac{3}{4}$  per centum in the case of such a foreign corporation, and (C) 2 per centum in the case of other individuals and partnerships: *Provided further*, That if the owners of such obligations are not known to the withholding agent the Commissioner may authorize such deduction and withholding to be at the rate of 2 per centum, or, if the liability assumed by the obligor does not exceed 2 per centum of the interest, then at the rate of 8 per centum.

(2) *Benefit of Credits Against Net Income*.—Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the credits provided in section 25 (c) and (d); nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 215.

\* \* \* \* \*

(d) *Income of Recipient*.—Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be

credited against the amount of income tax  
as computed in such return.

Treasury Regulations 77, promulgated under the  
Revenue Act of 1932:

Art. 761. *Withholding tax at source.*—

Withholding of a tax of 2 per cent is re-  
quired in the case of interest paid to an indi-  
vidual or a partnership, whether resident or  
nonresident (see article 1318), or to a non-  
resident foreign corporation upon bonds or  
other obligations of domestic corporations  
or resident foreign corporations (see article  
1318) containing a tax-free covenant, except  
that if the liability assumed by the obligor  
in connection with such a covenant does not  
exceed 2 per cent of the interest, withholding  
is required at the rate of 8 per cent in the  
case of a nonresident alien or a nonresident  
partnership composed in whole or in part of  
nonresident alien individuals, and at the rate  
of 13¾ per cent in the case of a nonresident  
foreign corporation. However, withholding  
is not required in the case of interest pay-  
ments on such bonds or obligations of a  
domestic or resident foreign corporation  
qualifying under section 119 (a) (1) (B), if  
made to a nonresident alien, to a partnership  
composed in whole of nonresident aliens, or  
to a nonresident foreign corporation. \* \* \*  
If the owner of bonds or other obligations  
of a corporation containing a tax-free cove-  
nant is unknown to the withholding agent a  
tax of 2 per cent must be withheld from in-  
terest thereon unless the liability assumed  
by the obligor does not exceed 2 per cent of  
the interest, in which case withholding must  
be at the rate of 8 per cent.

Bonds issued under a trust deed containing a tax-free covenant are treated as if they contained such a covenant. \* \* \*

Where in connection with the sale of its property, payment of the bonds or other obligations of a corporation is assumed by the assignee, such assignee, whether an individual, partnership, or corporation, must deduct and withhold such taxes as would be required to be withheld by the assignor had no such sale or transfer been made. \* \* \*

In the case of corporate bonds or other obligations containing a tax-free covenant, the corporation paying a Federal tax, or any part of it, for someone else pursuant to its agreement is not entitled to deduct such payment from gross income on any ground, nor shall the tax so paid be included in the gross income of the bondholder. The amount of the tax may nevertheless be claimed by the bondholder as a credit against the total amount of tax due in accordance with section 143 (d). \* \* \*

Art. 768. *Return and payment of tax withheld.*—Every withholding agent shall make on or before March 15 an annual return on Form 1013 of the tax withheld from interest on corporate bonds or other obligations. This return should be filed with the collector for the district in which the withholding agent is located. \* \* \*

Art. 769. *Ownership certificates in the case of fiduciaries and joint owners.*—When fiduciaries have the control and custody of more than one estate or trust, and such estates and trusts have as assets bonds of corporations and other securities, a certificate of ownership shall be executed for each

estate or trust, regardless of the fact that the bonds are of the same issue. \* \* \*

The corresponding articles of Treasury Regulations 74, promulgated under the Revenue Act of 1928, do not differ materially from the above-quoted regulations.

